

Grassmueck v Werner J.Nistler, Jr. et. al., Adversary No 00-3097  
In re Nistler, 399-35720-tmb7

10/2/01 District Court (A.Brown) aff'g Judge Brown unpublished

District Court affirmed Judge Brown's ruling for the Defendants on the Trustee's proceeding to avoid the debtor's disclaimer, executed on the eve of bankruptcy, of an inheritance that the debtor received from his father. The bankruptcy court, citing In re Bright, 241 B.R. 664 (9<sup>th</sup> Cir BAP 1999) held that the disclaimer, which, under state law, was retroactive to the date of the father's death, was not a transfer of any "interest of the debtor in property" within the meaning of the Bankruptcy Code. The trustee appealed, arguing that In re Bright had been indirectly overruled by the Supreme Court's opinion in Drye v United States, 528 U.S. 49, 120 S.Ct. 474 (1999), which held that a disclaimer of an inheritance could not defeat a federal tax lien that predated the disclaimer and the decedent's death.

The District court rejected the trustee's argument that Drye impliedly overruled Bright, finding that Drye was "specifically limited to federal tax liens under 16 U.S.C. § 6321 and [had] no bearing on the issue before the court." It then addressed the bankruptcy court's reliance on Bright. It agreed with the bankruptcy court that Bright was not binding authority, but like the bankruptcy court, agreed with the reasoning of the case. Consequently, it found no error in the bankruptcy court's ruling.

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DISTRICT OF OREGON  
PORTLAND, OREGON

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BROWN, Judge.

This matter comes before the Court on Plaintiff-Appellant's appeal of a final decision of the bankruptcy court in an adversary proceeding. Pursuant to 28 U.S.C. § 158(b)(1) and LR 2200-2, Plaintiff objected to referral of this matter to the Bankruptcy Appellate Panel and elected to have the appeal heard by this Court. The Court, therefore, has jurisdiction over the appeal pursuant to 28 U.S.C. § 158(a).

This Court reviews *de novo* a bankruptcy court's conclusions of law. *Grey v. Federated Group, Inc.*, 107 F.3d 730, 732 (9<sup>th</sup> Cir. 1997). The bankruptcy court's findings of fact cannot be set aside unless "clearly erroneous." Fed. R. Bankr. Pro. 8013.

Plaintiff-Appellant is the trustee in bankruptcy in the Chapter 7 proceedings for debtors' Charles M. Nistler and Jana L. Nistler. Plaintiff-Appellant filed an adversary proceeding in bankruptcy court seeking a declaration that a disclaimer of

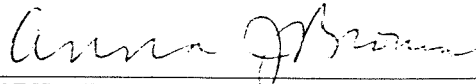
inheritance filed by Charles Nistler was ineffective as a fraudulent conveyance under 11 U.S.C. § 548. Cross motions for summary judgment were filed in the bankruptcy court. In a memorandum opinion issued March 9, 2001, Bankruptcy Judge Trish M. Brown, ruled the disclaimer was effective, granted Defendants' Motion for Summary Judgment and denied Plaintiff's Motion. A judgment dismissing the adversary proceeding was entered accordingly.

This Court has carefully and thoroughly reviewed the record *de novo* and finds no error. Although the decision of the Ninth Circuit Bankruptcy Appellate Panel in *In re Bright*, 241 B.R. 664 (9<sup>th</sup> Cir. BAP 1999) is not binding on this Court, we agree with the court's reasoning in that case. This Court, moreover, rejects Plaintiff-Appellant's argument that *Drye v. United States*, 528 U.S. 49 (1999) compels a different result. *Drye* is specifically limited to federal tax liens under 26 U.S.C. § 6321 and has no bearing on the issue before the Court.

The decision of the bankruptcy court, therefore, is **AFFIRMED** in all respects.

IT IS SO ORDERED.

DATED this 2nd day of October, 2001.

  
ANNA J. BROWN  
United States District Judge

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